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Supreme Court, U.S.
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No. 01 150

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In the

Supreme Court of the United States

HEMANGINI PANDYA,

Petitioner,

versus

EDWARD HOSPITAL, a Non-profit Corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

DID THE COURT BELOW MISAPPLY THE RECENT SUPREME COURT DECISION IN *REEVES V. SANDERSON PLUMBING PRODS., INC.*, 530 U.S. 133,120 S.CT. 2097, 147 L.ED.2D 105 (2000) AS WELL AS SEVENTH CIRCUIT PRECEDENT FOR DECIDING MOTIONS FOR JUDGMENT AS A MATTER OF LAW, AND, IF SO, DID THIS ACTION CONSTITUTE A KNOWING AND DELIBERATE FAILURE TO FOLLOW SUCH PRECEDENT, THEREFORE JUSTIFYING REVIEW BY THE SUPREME COURT.

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OPINIONS BELOW

The judgment order of the United States Court of Appeals for the Seventh Circuit in Hemangini Pandya v. Edward Hospital, is unreported and is set forth in the Appendix hereto at App. 1a. The judgment order of the District Court for the Northern District of Illinois in Hemangini Pandya v. Edward Hospital, also unreported, is set forth in the Appendix hereto at App. 5a.

BASIS FOR JURISDICTION

The judgment order of the United States Court of Appeals for the Seventh Circuit affirming the decision of the District Court of the Northern District of Illinois was entered on January 17, 2001 (App. 1a), and the order denying plaintiff's petition for rehearing and for rehearing *en banc*, was filed on February 15, 2001. This petition for writ of certiorari is filed pursuant to order of this Court, Justice Stevens, entered on May 14, 2001, which extended the time within which to file for a writ of certiorari to and including July 15, 2001. (Application No. 00A983). The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1254(l).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Civil Rights Act of 1964–42 U.S.C. § 2000e-2:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex or national origin...

STATEMENT OF THE CASE

Hemangini Pandya is a native of Gujarat, India ("Pandya"). She was employed by Edward Hospital, Naperville, Illinois (the "Hospital"), in January 1995, first as an agency, temporary employee, and then as regular staff in the Hospital's patient business office.

Pandya brought this Title VII civil rights claim against the Hospital alleging that she was treated less favorably than other employees similarly situated with respect to job assignments and opportunities. She also alleged that she was the victim of verbal abuse, and other abuse, that was not only tolerated by her supervisors, but in which they themselves participated and encouraged. She was the only foreign-born person in her department.

Pandya also alleged that she had received only favorable comments about her job performance from her supervisors, and from Hospital patients and their families, staff physicians, insurance carrier representatives, etc. She admits that at various times her supervisors gave her, or showed her, a memorandum or some other writing to the contrary, including the one given to her when she was fired on June 13, 1996. However, she alleges that each and every factual allegation contained in the memoranda is false.

This matter was tried to a jury on May 4 and 5, 2000. For her case in chief, Pandya herself testified as to elements of her prima facie (indirect proof) case of illegal discrimination under Title VII, i.e., (1) that she was a member of a protected class–foreign born, (2) that she was meeting the legitimate expectations of her employer, the Hospital, and (3) that the Hospital treated her less favorably than other employees similarly situated. Point 1 was obvious and, in fact, was stipulated to. For Point 2, she testified that, except for several documents she had seen, or been given from time to time, she had only received praise for her job performance from her supervisors and others,. For Point 3, she testified, among other things, that she was the only employee in her category who was involuntarily reduced from full-time to part-time in the fall of 1995. Likewise, she was the only employee who was not "rehired" during a general "reorganization" several months later, even though she had more experience and formal education.

To aid in her proof of Point 2, that she was meeting the legitimate expectations of the Hospital, Pandya testified under oath regarding every negative writing that she had ever seen regarding her job performance. Her testimony was that each and every factual allegation contained in these writings was false. Moreover, Pandya's testimony was that the persons who authored the memoranda either knew that these factual allegations were false, or realized them to be so when she raised contemporaneous objections or questions. Indeed, in one case, the "corrections" appear on the face of the document itself, completely eliminating any significance the document may otherwise have as a "disciplinary" note. In numerous other instances,

according to Pandya's testimony, she was told that the questioned issue of fact would be "checked out" and would be followed up if the issue was still deemed valid. There was no follow up, so she assumed that all such issues had been dropped.

Even so, at the close of Pandya's case in chief, the Hospital moved for judgment as a matter of law on the basis that, among other things, Pandya had failed to make out a prima facie case of Title VII illegal employment discrimination under the *McDonnell Douglas* framework for indirect proof. *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 802 (1973). The trial court granted this motion, but did so for reasons quite distinct from those advanced by the Hospital, and as announced orally from the bench. The trial court freely acknowledged Pandya's unrebutted, and unimpeached evidence that the Hospital had treated her poorly, even as compared to other, similarly situated employees. However improper it may have been to do so, the court focused its concerns on the lack of any *direct* evidence that the ill treatment was due to the fact that Pandya was Indian, pointing out that even Pandya herself was not able to say that it was, nor 'find anyone else who could". In any event, the trial was promptly concluded at that point, judgment was entered for the Hospital, and Pandya later appealed.

On January 17, 2001, the Court of Appeals issued its judgment order affirming the order of the District Judge granting the Hospital's motion for judgment as a matter of law. Unlike the District Judge, however, the Court of Appeals reasoned, in the first instance at least, that Pandya had indeed failed to make out a prima facie case of Title VII discrimination. And even though it is not clear from the record why they did so, the Court of Appeals then went on hold that Pandya had also failed to show that the legitimate, non-discriminatory reasons offered by the Hospital for her bad treatment were merely pretextual. This result, too, differed significantly from the findings of the trial court.

Pandya has duly filed her petition for writ of certiorari within the time allowed for such filing as extended by this Court.

REASON FOR GRANTING THE WRIT

THE COURT BELOW HAS MISAPPLIED THE RECENT SUPREME COURT DECISION IN *REEVES V. SANDERSON PLUMBING PRODS., INC.*, 530 U.S. 133,120 S.CT. 2097, 147 L.ED.2D 105 (2000), AS WELL AS SEVENTH

CIRCUIT PRECEDENT, FOR DECIDING MOTIONS FOR JUDGMENT AS A MATTER OF LAW, AND HAS DONE SO IN SUCH A GROSS MANNER AS TO CONSTITUTE A KNOWING AND DELIBERATE FAILURE TO FOLLOW SUCH PRECEDENT, SO THAT REVIEW BY THE SUPREME COURT IS APPROPRIATE.

The facts of the present case are really quite simple and easy to understand. Applying the relevant law to these facts is a bit more of a challenge, but this, too, is a fairly easy task. Therefore, it is difficult to understand how the court below, in the judgment order entered in this cause (App. 1a-4a) managed to make this matter so complicated. It does appear that they were making a knowing and deliberate effort not to be bound by existing precedent, including recent Supreme Court precedent. Therefore, Rule 10 Supreme Court review is appropriate.

To be more specific, the court frequently sets forth a proper statement of applicable law, but then, in a summary and conclusory fashion, makes a grossly improper application of that authority. For example, the court asserts that the standard of review in this case is a de novo review of the entire record, citing *Massey v. Blue Cross-Blue Shield of Ill.*, 226 F.3d 922, 924 (7th Cir. 2000). However, it is abundantly clear, as discussed herein below, that such a standard of review was never applied. Also, the court correctly cites the recent Supreme Court case of *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133,120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) for the proposition that "a plaintiff s prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Reeves,* 120 S.Ct. at 2108. However, the court then states, despite clear evidence in the record to the contrary, that Pandya's evidence showing that the "asserted justification is false" was merely self-serving opinion". *Aungst v. Westinghouse Elec. Corp.*, 937 F.2d 1216, 1221 (7th Cir. 1991). In effect, the Court of Appeals is disregarding the very precedent that it is citing. This issue, in a post-*Reeves* context, has been addressed by Judge Williams in her dissenting opinion in *.Malacara v. City of Madison*, 224. Fed.3d 727, 732 (7th Cir. 2000), where, among other things, she accuses the panel majority of doing "exactly what the Supreme Court in *Reeves* expressly proscribes". Pandya's present petition may be viewed as another way of addressing what appears to be a much broader problem.

The Court of Appeals issued its decision by unpublished order dated

January 17, 2001, affirming the judgment of the trial court for reasons, set forth in the order. (App. 1a-4a). These reasons, totaling five in number, may fairly be stated as follows:

1. Pandya failed to establish a prima facie case of Title VII discrimination using the indirect method of proof of *McDonnell Douglas*;

2. Pandya failed to "muster *any* probative evidence that her employer's explanation for her termination was false (emphasis supplied);

3. The jury was not presented *any* evidence, other than Pandya's opinion, that she was living up to any of the legitimate expectations of Edward Hospital, her self-serving testimony disputing her performance evaluations standing alone being insufficient to prove discrimination by a preponderance of the evidence (emphasis supplied), citing, *Aungst v. Westinghouse Elec. Corp.*, 937 F.2d 1216, 1221 (7th Cir. 1991); also, *Mills v. First Fed. Sav. & Loan Assn of Belvidere,* 83 F. 3 d 833, 843 (7th Cir. 1996) (summary judgment for employer appropriate where employee's contention of satisfactory performance merely contradicted employer's evidence of negative performance evaluations);

4. Pandya also offered *no* evidence that similarly-situated employees were treated more favorably than she was, claiming only that she was the only one disciplined and fired, citing, *Padford v. Herman, 148* F.3d 658, 671 (7th Cir. 1998) (employee must demonstrate she was treated differently than similarly situated employees to show discrimination by employer), emphasis supplied; and

5. Pandya did not present evidence that Edward Hospital did not sincerely believe their reasons presented for firing her.

In arriving at these conclusions it is clear that the Court of Appeals did not conduct the de novo review of the record as required by Seventh Circuit precedent. *Massey v. Blue Cross-Blue Shield of Ill.*, 226 F.3d 922, 924 (7th Cir. 2000). The disparity between the "evidence" referred to in this

order and the actual evidence adduced at trial, and as made a part of the record on appeal, is truly extraordinary, simply too great to be accidental or unintentional. Facts that were simply alleged by the Hospital, albeit in *written* memoranda, are treated as proven, while Pandya's sworn testimony, though never refuted or impeached by cross-examination or otherwise, were discounted, downplayed or ignored all togther. Moreover, this was done in a context where, under the well-settled rules for deciding motions for judgment as a matter of law, Pandya, as the non-moving party, had the right to have all evidence, including all reasonable inferences therefrom, construed in a light most favorable to her. *Id.* at 924.

Even so, the court below states, in an extraordinarily conclusory and exaggerated fashion, that "[T]he disciplinary documents *demonstrated* that Pandya had a history of poor job performance *throughout her time* with Edward Hospital" (emphasis supplied). At the same time, however, the court appears to brush aside properly admitted evidence (Pandya's detailed, sworn testimony) that raise doubts as the truthfulness and sincerity of the allegations contained in these so-called "disciplinary documents". The court does this with the use of phrases such as "she would not acknowledge", "[S]he could not recall", "nor could she remember", followed up by "[S]he also denied the accuracy of any of the concerns raised in the disciplinary memoranda". The court appears to suggest that Pandya's testimony was plagued by serious lapses of memory, so that her denials of the truthfulness of the factual concerns raised in the disciplinary memoranda were not very reliable.

Actually, the record on appeal shows that Pandya had no significant memory lapses at all, and that her denial of the truth of the "concerns" contained in the "disciplinary memoranda" is at the very heart of the evidence in this case, not just incidental to it, as suggested by the court. Moreover, Pandya's sworn testimony, far from being merely a recitation of her own "self-serving opinions", are thoroughly objective. In their most relevant, most crucial aspects, her testimony was based on statements and the conduct of (agents of) the Hospital itself. In other words, in an evidentiary sense, her most important testimony was based upon party admissions made against the party's own self interests.

For example, from evidence elicited under intense cross-examination, Pandya proved that her supervisor, Mick Jenco ("Jenco"), acknowledged that he had been misinformed about Pandya taking a company bank deposit home before later taking it to the bank, which would have been a violation of

Hospital policy. His error is demonstrated by notations made by Jenco himself directly on the face of the document which was admitted into evidence as Trial Exhibit 4, one of the five such exhibits admitted into evidence. Jenco's persistent bad faith was further demonstrated, in this instance, by his adamant insistence that Pandya sign the document anyway, although he steadfastly (with angry yelling) refused to allow her to include a clarifying note of her own along with her signature. The record shows that she was eventually (two days later) allowed to include such a note, but only after requesting the assistance of the Hospital's director of personnel, Cari Beckman.

In a less dramatic, but no less objective, way, the record (Pandya's testimony) shows that the very first of the so-called "disciplinary memoranda" that she received, the one admitted into evidence as Trial Exhibit 4, was actually mislabeled. Although it was captioned "Performance Concerns", it mostly had to do with duties that Pandya had not been previously assigned, leading her, at one point in her testimony, to ask rhetorically, " But if I didn't do that job, how can it be a 'concern'?".

In similar ways, the evidence clearly calls into question the truthfulness of the remaining three "disciplinary memoranda". In each and every instance, Pandya, either denied the truthfulness of the factual matters asserted, or otherwise called into question their validity. She did so both at, or near, the time of each incident, and she did so again by means of her sworn testimony at trial.

For example, the Hospital asserts in Pandya's termination memo, dated June 13, 1996, and admitted into evidence as Trial Exhibit 1, that the Hospital had received a total of three patient complaints which meant that Pandya had failed to meet a stated condition for her continued employment. The record shows that Pandya does not deny that the Hospital actually received the complaint, but she does question the Hospital's good faith in using the particular patient complaint for this purpose since the evidence is that the patient (patient's husband) in question was extremely upset and abusive *from the moment that he called* the Hospital and Pandya just happened to be unlucky enough to be the one who took the call. Furthermore, the record shows that the patient was just as angry with Dave Carson, Pandya's supervisor ("Carson"), as he was with Pandya, since though Carson had promised Pandya that he would take care of the situation, he had failed to promptly respond to the patient, making a bad situation much worse. Even so, the evidence shows that Pandya was able to stay focused enough to

follow through on the matter, and, despite the patients threats not to pay, assure that the Hospital was properly compensated for the services rendered, or approximately $2,300.

Most notably, the record also shows that Pandya was never told anything about patient complaint numbers 1 and 2, never given an opportunity improve service to these patients, or, in light of her hostile working environment, never given and opportunity verify the fact that they even existed.

This incident is not cited to show that the Hospital's expectations were "unreasonable" in the *McDonnell Douglas* sense as that terminology has been construed by the federal courts. After all, as a general matter, an employer need not be *right* in its judgments of performance, just *honest*. *Gustovich v. AT & T Communications, Inc.*, 972 F.2d 845, 848 (7th Cir. 1997). But this is precisely the point in the present case. The Hospital's was clearly more interested in building a case against Pandya, however phony, than in getting real solutions to real business problems.

Finally, evidence of the failure of the Court of Appeals to review the entire record de novo may be seen in its failure to acknowledge the fact that Pandya's complaint against the Hospital, and her proofs at trial, were never simply about her termination of employment. Pandya's complaint is actually about a pattern of dealing wherein the Hospital treated her far less favorably than other employees similarly situated. In most of these instances, the Hospital never offered any reason for the bad treatment, let alone a legitimate, non-discriminatory reason, in the *McDonnell Douglas* sense. The record shows that Pandya was publicly yelled at, had her desk openly searched, was officially ostracized and isolated from other staff, was not invited to important staff meetings, and the like.

Turning more specifically, to the five bases cited by the court below for its decision to affirm, it should be noted that of these five bases, the first (prima facie case under *McDonnell Douglas*), third (meeting legitimate expectations) and fourth (treated less favorably than others similar situated) are related to the same more basic issue of whether Pandya's evidence made out a prima facie case of discrimination under the *McDonnell Douglas* framework for indirect proof of Title VII discrimination. The second (falsity of reasons for adverse actions) and fifth (reasons, even if false, were sincerely held) bases, the" pretext elements" cited by the court could only come into play if the court actually found sufficient evidence to make out the

prima facie case, and it is not at all clear why the court has included these as separate bases for its decision. In any event, even though the court never did acknowledge it, the evidence on *all five elements* appears in the record in the present case.

The *McDonnell Douglas* method of indirect proof of Title VII discrimination as applied to this case places the initial burden upon Pandya to make out a prima facie case of Title VII discrimination. To do so, she must show three things, namely, (1) that she is a member of a protected class under Title VII, (2) that she was meeting the legitimate expectations of the Hospital as her employer, and (3) that she was treated less favorably than other employees similarly situated..

The first of these, whether Pandya belongs to a protected class under Title VII, was never an issue in the trial court, and it is nowhere cited as an issue by the Court of Appeals. Unlike the trial court, however, the Court of Appeals found that the evidence is insufficient to support a prima facie case of discrimination since, according to the Court of Appeals, on the last two elements under *McDonnell Douglas*, i.e., that she was meeting the legitimate expectations of the Hospital, and that she was treated less favorably than other employees similarly situated.

The Court of Appeals found that the "jury was not presented *any* evidence, other than Pandya's opinion, that she was living up to any of the legitimate expectations of Edward Hospital", and that her evidence to the contrary was merely "self- serving testimony" (emphasis supplied). The truth is, however, as already discussed, much of Pandya's testimony should be deemed to be extraordinarily reliable since it was based upon things said and done by her supervisors and, therefore, they are of the nature of party admissions against (self) interest.

The finding by the court that Pandya offered *no* evidence that similarly-situated employees were treated more favorably is truly remarkable, unless this is to be explained by the court's apparent focus on Pandya's (second) termination, as already discussed. The record clearly shows that after her *first* firing, as part of a mass firing and reorganization, only Pandya wound up without any job at all. Her objective qualifications, such as experience and formal education and training, show that she was better qualified than those colleagues who were rehired. But she was subjectively deemed to be the less qualified of the group.

Under the *McDonnell Douglas* framework, if, but only if, Pandya's evidence makes out a prima facie case of discrimination, then the Hospital has the burden of producing a legitimate, non-discriminatory reason for its action(s). In such case, Pandya would then need to show that such reasons given by the Hospital were merely pretextual, that is not credible or worthy of belief. As already observed, it is not clear why the court below included these last two elements of the complete *McDonnell Douglas* analysis, since the court had already declared that Pandya had failed to make out a prima facie case. It may simply signal the fact that the court felt that even if Pandya had made out a prima facie case of discrimination, she could not carry her ultimate burden of persuasion before a jury due to such supposed deficiencies. Also, it is true that there is considerable play between and among all of the elements of a proper *McDonnell Douglas* analysis. *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S. Ct. 2097, 2198.

As already discussed, the actual evidence in the record of this case, shows sufficient evidence to meet all elements of a complete, indirect proof of Title VII discrimination, including these last elements related to pretext and sincerity. The record shows that the Hospital's legitimate, non-discriminatory reasons for the negative treatment of Pandya, offered in the form of five "disciplinary memoranda" are, in fact, demonstrably false or pretextual. Each and every factual point contained in them was denied by Pandya, both contemporaneously and again at trial, and when contemporaneously challenged, the issue was either acknowledged by her supervisors to be unfouded, or simply dropped altogether.

The reasoning of federal courts, in ruling on motions for judgment as a matter of law can be extremely difficult to follow or to rationalize. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). As discussed in *Anderson*, especially in the separately dissenting opinions of Justice Brennan and Justice Rehnquist, the problem appears to be largely due to the oftentimes difficult balance that a judge must strike in these circumstance where he or she must consider what a reasonable jury could decide based on the evidence as presented, but, at the same time, take the great amount of care needed to preserve the litigants' right, even constitutional right, to have all issues of fact decided by a jury, and not by a judge. Of course, if the evidence is a particular case is severely one-sided, such motions are easily handled and there will be little question or disagreement about the results. The present case falls appears to fall somewhere in between, but is substantially one-sided in the direction of Pandya. Therefore circuit precedent, though cited by the court *against*

Pandya in the subject order affirming, actually *favors* her on each and every issue raised by the court below.

First of all, the court is required to examine the *entire* record, *Massey v. Blue Cross-Blue Shield of111.*, 226 F.3d 922, 924 (7th Cir. 2000), including the evidentiary record discussed elsewhere in this petition. On the issue of whether Pandya's evidence makes out a prima facie case of discrimination, circuit precedent cited by the court below, *Aungst v. Westinghouse Elec. Corp.*, 937 F.2d 1216, 1221 (7th Cir. 199 1), *Mills v. First Fed. Sav. & Loan Assn of Belvidere,* 83 F. 3 d 83 3, 843 (7th Cir. 1996), *Padford v. Herman, 148* F.3d 658, 671 (7th Cir. 1998), makes it clear, by contradistinction, at least, that Pandya firmly established the two elements at issue in her prima facie case–she was meeting the Hospital's reasonable expectations, and she was treated less favorably than employees similarly situated.. *Aungst* (at 1221) and *Mills* (at 843) are cited by the court for the proposition that since Pandya's contention of satisfactory performance merely contradicted the Hospital's evidence of negative performance evaluations, summary judgment (or judgment as a matter of law) for the Hospital was appropriate. But a de novo review of the record shows that Pandya did far more than merely contradict negative performance evaluations.

The same holds true for the *Padford* decision, cited by the court below for the proposition that the evidence must demonstrate that Pandya was treated differently than similarly situated employees. This is exactly what the record shows.

Finally, the court below cited the decision in *Brill v. Lante Corp.*, 119 F.3d 1266, 1273 (7th Cir. 1997), which, in turn contains a citation to *Gustovich v. AT& T Comm., Inc.*, 972 F.2d 845, 848 (7th Cir. 1992) on the issue of pretext. The evidence in the record, as already discussed in this regard, does not raise the issue of the Hospital's right to its honestly held negative opinions about Pandya's job performance. The issue is rather whether the Hospital's negative opinions and actions were honest. The evidence in the record, when viewed in its entirety as identified and discussed herein makes it clear that they were not.

CONCLUSION

For all of the reasons identified herein, a writ of certiorari should issue to review the decision of the United States Court of Appeals for the

Seventh Circuit and, ultimately, to remand the matter to the District Court for a new trial.

Respectfully submitted,
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APPENDIX

No. 00-2699

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

HEMANGINI PANDYA,
Plaintiff-Appellant,

v.

EDWARD HOSPITAL, a Non-profit Corporation
Defendant-Appellee.

November 15, 2000, Argued
January 17, 2001, Decided

COUNSEL:

For HEMANGINI PANDYA, Plaintiff-Appellant: Edward E. Robinson, EDWARD E. ROBINSON, LTD., Columbia, SC.

For EDWARD HOSPITAL, Defendant-Appellee: Kerry E. Saltzman, STICKLER & NELSON, Chicago, IL.

JUDGES:

Before POSNER, EASTERBROOK, and KANNE, Circuit Judges.

ORDER:

After Edward Hospital fired Hemangini Pandya in 1996, she sued it under Title VII, 42 U.S.C. § 2000e-2 *et seq.*, for national-origin discrimination. The case went to trial before a jury, and at the end of the plaintiff's case in chief, Edward Hospital moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a). The district court granted the motion, and we affirm.

Pandya, a native of Gujarat State, India, worked for Edward Hospital, beginning on January 5, 1995. Her position required her to process patient bills with insurance companies and communicate with patients concerning questions with their individual bills. Throughout Pandya's employment with Edward Hospital, she was given written disciplinary warnings for poor job performance. The complaints from Pandya's supervisors included inefficiency in processing patient bills, excessive personal phone calls, sleeping at her desk difficulty understanding and communicating with patients who phoned with questions regarding their statements, and unprofessional behavior in dealing with her colleagues and supervisors.

Although she was hired originally for a full-time position, Pandya's hours were reduced in November 1995 after Edward Hospital reassessed its need for full-time employees. Pandya worked part-time until she was rehired as a full-time financial counselor in March 1996. Shortly after she returned to a full-time position, Pandya received a disciplinary warning on May 17, 1996, stating that she still required repeated instructions to perform the same menial tasks, acted unprofessionally by fighting with and interrupting her colleagues, and demanded unnecessary amounts of supervision after a week of one-on-one training. When her performance failed to improve, Edward Hospital terminated her in June 1996.

At trial, the plaintiff's case in chief consisted of Pandya's testimony and five disciplinary memoranda that were entered into evidence. The disciplinary documents demonstrated that Pandya had a history of poor job performance throughout her time with Edward Hospital. During Pandya's testimony regarding the disciplinary actions, she would not acknowledge any awareness that Edward Hospital was concerned about her performance. She could not recall any conversations with one supervisor, warning her that her work needed improvement, nor could she remember any discussion with another supervisor, regarding complaints about her handling of patient phone calls. She also denied the accuracy of any of the concerns raised in the disciplinary memoranda. Although Pandya claimed that she was the only employee disciplined and "harassed" by the management, she did not offer any examples of fellow employees who did not receive such treatment. She also testified that one supervisor made a discriminatory comment when he asked her, "Where'd you come from?"

The district court granted Edward Hospital's Rule 50(a) motion for judgment as a matter of law, finding that no reasonable jury could find that

Pandya had been fired because of her national origin, and further, that no reasonable jury could find that Edward Hospital's firing of Pandya for poor job performance was pretextual. Pandya filed a motion for reconsideration and a new trial under Rule 59(a), which the district court denied. She then brought this timely appeal.

We review de novo the grant of a Rule 50(a) judgment as a matter of law. *Massey v. Blue Cross-Blue Shield of Ill.*, 226 F.3d 922, 924 (7th Cir. 2000). Under Rule 50, a court should render judgment as a matter of law when "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Fed R. Civ. P. 50(a); *see also Reeves v. Sanderson Plumbing Products, Inc.*, 120 S. Ct. 2097, 2109 (2000). The standard for granting judgment as a matter of law "mirrors" the standard for granting summary judgment. *Reeves,* 120 S.Ct. at 2109 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 250-51 (1986)). Thus, we examine the record in its entirety, and view the evidence in the light most favorable to the party against whom judgment was granted. *Massey,* 226 F.3d at 924.

Recently, in *Reeves*, an Age Discrimination in Employment Act case in which the district court had granted the employer's Rule 50(a) motion, the Supreme Court observed that "a plaintiff s prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Reeves,* 120 S.Ct. at 2108. The Supreme Court also explained that "[w]hether judgment as a matter of law is appropriate in any particular case will depend on a number of factors. Those include the strength of the plaintiff s prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law." *Id.*

Here, judgment as a matter of law was appropriate because the plaintiff could neither establish a prima facie case nor muster any probative evidence that her employer's explanation for her termination was false. The jury was not presented any evidence, other than Pandya's opinion, that she was living up to any of the legitimate expectations of Edward Hospital. Pandya's self serving testimony disputing her performance evaluations standing alone is not sufficient to prove discrimination by a preponderance of the evidence. *See Aungst v. Westinghouse Elec. Corp.*, 937 F.2d 1216, 1221 (7th Cir. 199

1); *see also Mills v. First Fed. Sav. & Loan Ass'n of Belvidere*, 83 F. 3d 833, 843 (7th Cir. 1996) (summary judgment for employer appropriate where employee's contention of satisfactory performance merely contradicted employer's evidence of negative performance evaluations). Pandya also offered no evidence that similarly-situated employees were treated more favorably than she was, claiming only that she was the only one disciplined and fired. See *Pafford v. Herman*, 148 F.3d 658, 671 (7th Cir. 1998) (employee must demonstrate she was treated differently than similarly situated employees to show discrimination by employer). Moreover, she did not present evidence that Edward Hospital did not sincerely believe their reasons presented for firing her. *Brill v. Lante Corp.*, 119 F.3d 1266, 1273 (7th Cir. 1997) ("the question is not whether the [employer's performance] ratings were right but whether the employer's description of its reasons is honest") (quoting *Gustovich v. AT & T Comm., Inc.*, 972 F.2d 845, 848 (7th Cir. 1992)).

Even viewing the evidence in the light most favorable to Pandya, a reasonable jury could not have found that she proved national-origin discrimination. Thus, judgment as a matter of law in favor of Edward Hospital was appropriate.

AFFIRMED.

No. 00-2699

No. 97 C 1281

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

HEMANGINI PANDYA,
Plaintiff,

v.

EDWARD HOSPITAL, a Non-profit Corporation
Defendant-Appellee.

May 9, 2000, Docketed

IT IS HEREBY ORDERED AND ADJUDGED that defendant's motion for judgment as a matter of law is granted. Judgment is entered in favor of defendant, Edward Hospital and against plaintiff Dermangini [*sic*] Pandya.

Michael v. Dobbins, Clerk of Court

Gladys Lugo, Deputy Clerk